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In re Application of Rinks et al.
Technology Center 2128
Amendment filed December 5, 2006
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REMARKS

In the Office Action mailed on June 5, 2006, the Examiner reviewed claims 1 – 49 of the Application, with the result that claims 13, 15, 16, 17, 22, 23, 26, 27, 30 and 35 were rejected under 35 USC § 112, second paragraph. Also claims 1 – 6, 10 – 12, 15, 16, 25, 32, 38, 48 and 49 were rejected under 35 USC § 102 as being anticipated by Patent No. US 6,826,516 B1 to Hiromichi Ito ("Ito"). In response, the Applicants have amended the specification and claims as set forth above.

Claims 2 – 7 and 10 – 12 are canceled from the Application without prejudice to continue prosecution of this subject matter in another U.S. patent application. Claims 1, 8, 9, 13, 15, 16, 18, 22 – 27, 29 – 31, 35, 38 – 42, 46, 47 and 49 are currently amended. New claims 50 – 68 are added, with claim 50 being independent.

During a telephone interview with the Examiner on October 10, 2006, claims 1 – 9, 13, 15 – 17, 22, 23, 25 – 27, 30, 32, 35, 38 and 48 were discussed. From the documents of record, Patent No. US 6,826,516 B1 to Ito was considered with respect to claims 1 – 6, 15, 16, 25, 32, 38 and 48. The principal proposed amendments that were discussed are described below. The

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Examiner's arguments in the telephone interview were consistent with those stated in his Office Action mailed on June 5, 2006.

The Examiner's claim rejections under 35 USC § 112, second paragraph, for the term "substantially" were discussed with regard to claims 13, 15, 16, 22, 23, 26, 27, 30 and 35. For each of these claims, the Examiner's proposed amendment to delete "substantially" was considered. Applicants respectfully proposed that claims 26, 30 and 35 are definite based on the specification and drawings, and the Examiner accepted this position. Applicants accepted the Examiner's proposed amendment to delete "substantially" for claims 13, 15, 16, 22, 23 and 27.

The Examiner's claim rejection under 35 USC § 112, second paragraph, for the term "suitable" was discussed with regard to claim 17. The Examiner's proposal to replace the term "suitable" was considered. Applicants respectfully proposed that "suitable" was definite based on the specification and drawings, and the Examiner accepted this position.

The Examiner's claim rejections under 35 USC § 102, were discussed with regard to claims 1 – 6, 15 – 16, 25, 32, 38 and 48. For claims 1 – 6, Applicants accepted the Examiner's suggestion to cancel claims 2 and 7,

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and amend claim 1 by including the elements of claims 2 and 7. The Examiner indicated a willingness to favorably consider new claims which are broader than claim 8 and drawn to: 1. selecting a wood species for the poles, 2. selecting a size for the poles, or 3. selecting a spacing for the poles. These new claims are presented herein as claims 51, 54 and 55. The Applicants also mentioned an intent to submit other new claims, presented herein as claims 50, 52, 53 and 56 – 68. The Examiner confirmed that claims 8 and 9 are allowable, since they depend from the allowable combination of original claims 1, 2 and 7. The Examiner noted that claims 15 and 16 are allowable because they depend from allowable claim 14.

For claims 25, 32, 38 and 48, the Examiner indicated that he would take Applicants' views into consideration in his next action. Those views are as follows: First, Applicants respectfully stated that Ito does not recite indicating an overhead door, and therefore believe that claim 25 defines over Ito. Second, Applicants respectfully stated that trusses are only recited generally in Ito's background of the invention, not in the context of displaying a set of materials, and therefore believe that claim 32 defines over Ito. Third, Applicants respectfully stated that trusses are only recited generally in Ito's background of the invention, not in the context of displaying a visual model, and therefore believe that claim 38 defines over Ito. Finally, Applicants respectfully

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stated that Ito does not disclose selecting goods for the set of materials from the set of raw and finished goods according to a predetermined order of preference, and therefore believe that claim 48 defines over Ito.

The Examiner considered and did not object to Applicants' "BRIEF DESCRIPTION OF THE DRAWINGS," which begins on page 5, line 14 of the Specification.

The Examiner confirmed that Applicants' priority claim to U.S. Provisional Patent Application No. 60/421,378 filed on Oct. 25, 2002, is "of record." A "DECLARATION FOR UTILITY OR DESIGN PATENT APPLICATION (37 CFR 1.63)" was signed by Applicants on April 6, 2004, and filed on May 21, 2004. That "DECLARATION" referred to an amendment of April 6, 2004. This amendment (which was not filed) was considered at one point in time by Applicants as the correct mechanism for making a priority claim. (The sole purpose of this amendment was to file a priority claim.) Applicants learned afterwards that the priority claim originally filed as part of the Specification on October 27, 2003, was sufficient and that no such amendment is necessary. Under these circumstances, the Examiner advised Applicants that filing a supplemental declaration under 37 CFR § 1.67 would be appropriate for: 1. presenting the new claims included in this "AMENDMENT,"

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and 2. clarifying that no amendment was, in fact, filed on April 6, 2004. (This concludes the subject matter discussed in the telephone interview on October 10, 2006.)

All cancelled claims are cancelled without prejudice to continue prosecution.

Applicants state that the allowable claims may be allowable for reasons in addition to, or in lieu of, those identified by the Examiner.

Applicants regards Patent No. US 6,826,516 B1 to Ito, together with the other U.S. patents cited in the Office Action mailed on June 5, 2006, as documents of record only, and not as prior art. Applicants respectfully maintain that statements which have been made during the course of prosecution to distinguish the claimed subject matter over the cited documents are not to be interpreted as admissions that the cited documents are prior art.

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Rejections Under 35 USC § 112

Dependent claim 17 was rejected under 35 USC § 112, second paragraph, regarding the term "suitable". Applicants respectfully request reconsideration of this rejection in view of the following comments:

Referring to the Specification at page 16, beginning at line 21, "A feature of the invention, called Built-In Positive Error Checking (or 'BIPEC'), requires the user to make choices for the estimate that will produce a complete and feasible design . . . Throughout the program a user cannot continue with an estimate if a required entry isn't made." Other types of choices and entries are described on page 17 of the Specification as "an invalid parameter" (at line 4), "incompatible" (wall layers, at line 13) and "not a valid choice" (roofing material layer "none," at line 22). By contrast, suitable goods in the database are those goods which do permit given user selections, i.e. permit an estimate for a wood frame building to continue, as described above. See the Specification at page 18, lines 6 – 7. An example concerning the existence of suitable goods in the database is at page 26, lines 12 – 20, for trusses. The

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program command "Search for a Matching Truss Product" does not find a suitable truss if a truss having the loading parameters being selected by the user is not already in the database (resulting in the screen display of FIG. 33). Suitable goods, in this case, are trusses in the database which do have the loading parameters being selected by the user. Therefore dependent claim 17 reasonably defines the invention because suitable goods are those which, when selected by a user, permit an estimate for a wood frame building to continue, so that a complete and feasible design is produced.

In view of the above, Applicants believe that "suitable" is definite as used in dependent claim 17, and therefore respectfully request withdrawal of the rejection under 35 USC § 112, second paragraph.

Dependent claims 26, 30 and 35 were rejected under 35 USC § 112, second paragraph, regarding the term "substantially". Applicants respectfully request reconsideration of these rejections in view of the following comments:

For dependent claim 30, "substantially" is discussed in the Specification from page 37, line 13 to page 38, line 1. "Substantially" is used because there can be some minor variations in how the distance between each

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of the plurality of poles is measured and displayed, even within the same floor plan. For example, the distance can be measured from the surface of one pole facing an opening to the surface of another pole facing the opening, i.e. measuring "inside-to-inside." In the same floor plan the distance can also be measured between poles "outside-to-outside," i.e. the sides of the respective poles that face in opposite directions. In both of these examples the sum of the distance substantially between each of the plurality of poles is equal to the building dimension for the wall, minus the combined thicknesses of two wall girts. Therefore dependent claim 30 reasonably defines the invention because it contemplates minor variations in how the distance between each of the poles is measured when a distance substantially between each of the poles is displayed. In like manner, a person having ordinary skill in the art and given Applicants' Specification would understand that dependent claim 26 contemplates minor variations in how the distance between opposite corners of the building is measured when indicating in the floor plan substantially the distance between opposite corners of the building. Therefore dependent claim 26 reasonably defines the invention.

For dependent claim 35, "substantially" is discussed in the Specification at page 44, lines 6 – 11. The elements recited in dependent claim 35, including shading substantially every other wall girt, are supported in FIG.

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166, and are respectfully submitted for entrance into the Application under MPEP 2163 II. A. 3(a). Wall girts, skirt boards and truss carriers (or top girts) are known by persons having ordinary skill in the art to be in the same general category of lumber – horizontally oriented members which can be fastened to the poles of a wood frame building and then used to attach wall materials. These three types of boards are described together concerning another feature of the program at page 12, line 8, of the Specification. Referring to FIG. 166, an example is shown where a wall girt (between the two overhead doors) and an adjacent top girt (i.e. wall girt at the top of the wall) are both shaded. FIG. 166 is an example of shading every wall girt (locally), versus shading every other wall girt. Therefore dependent claim 35 reasonably defines the invention because shading substantially every other wall girt occurs when using the invention.

In view of the above, Applicants believe that “substantially” is definite as used in dependent claims 26, 30 and 35, and therefore respectfully request withdrawal of the rejection under 35 USC § 112, second paragraph.

Rejections Under 35 USC § 102

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Regarding claim 48, the Examiner cited Ito at column 4, lines 23 – 27: "Also, in this embodiment, the data that are not directly associated with the structure, i.e., specification data (such as types, installation areas and sizes) of roof materials, wall materials, floor materials, and interior components, such as stairs, windows and doors, are inputted for use in the cost estimation with the cost estimation program described further below." Therefore Ito recites various categories of goods for use in a cost estimation program. But Ito does not disclose the organization of goods within a particular category for use by such a program. By contrast, the Specification at page 40, line 13 to page 41, line 8 describes a detailed method of the invention for selecting goods for use in the estimate for the wood frame building according to a predetermined order of preference within a particular category. The order of preference is determined by the user before beginning an estimate. Therefore claim 48 defines over Ito.

Regarding claim 49, Applicants' have amended the claim in accordance with the allowable combination of original claims 1, 2 and 7. Therefore Applicants respectfully request allowance of claim 49.

New Claims

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Applicants respectfully request allowance of new claim 50, as being supported in the Specification at page 31, line 15 to page 32, line 3, and in FIGS. 55 – 56.

New claims 51 – 68 are allowable since they depend from the allowable combination of original claims 1, 2 and 7, and are supported by the Specification and/or figures. The new claims supported by the figures are respectfully submitted for entrance into the Application under MPEP 2163 II. A.

3(a). For example:

New claim 51 is supported in the Specification at page 11, line 2, and in FIG. 9 .

New claim 52 is supported in the Specification at page 11, lines 16 – 18 , and in FIG. 9.

New claim 53 is supported in the Specification at page 11, line 16 – 18, and in FIG. 9.

New claim 54 is supported in the Specification at page 11, line 3, and in FIG. 9.

New claim 55 is supported in the Specification at page 11, line 6 - 9, and in FIG. 9.

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New claim 56 is supported in FIG. 9.

New claim 57 is supported in the Specification at page 11,
lines 9 – 12, and in FIG. 9.

New claim 58 is supported in the Specification at page 11,
line 4, and in FIG. 9.

New claims 59 – 60 are supported in the Specification at
page 12, line 11, and in FIGS. 12, 171 and 172.

New claim 61 is supported in the Specification at page 15,
lines 2 – 4.

New claim 62 is supported in the Specification at page 14,
line 23 to page 15, line 2.

New claim 63 is supported in the Specification at page 12,
line 1 to page 15, line 16, and in FIGS. 11 – 13 and 165 - 173.

New claim 64 is supported in FIGS. 106, 109, 23 and 31.

New claim 65 is supported in FIGS. 106 and 109.

New claim 66 is supported in FIG. 170.

New claim 67 is supported in the Specification at page 36 ,
lines 18 – 20, page 16, lines 16 – 19, page 18, line 16, page 23, line 16 and in
FIGS. 96 – 99.

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New claim 68 is supported in the Specification at page 23, lines 23 – 24 and in FIG. 23.

New claim 64 is supported in FIG. 106. The visual model of FIG. 106 displays a location on the roof for each plywood sheet in the estimate being determined. (The plywood layout is symmetric for the two halves of the roof, since only one dimension, 12 inches, is shown for Overhang, Eaves in FIG. 23.) FIG. 106 is clearly a plywood layout for a roof because of its text references and visual indications of the eave and gable overhang distances, and the text reference to ridge vent.

New claim 65 is supported in FIGS. 106 and 109. The visual model of FIG. 106 displays a number of plywood sheets used for the roof in the estimate being determined. That number is "13 pcs." (pieces) per side, according to the last line of FIG. 106 (which equals a total of "26" sheets, according to FIG. 109 under Roof Layer 1).

The elements recited in new claim 66, including shading substantially every other purlin, are supported in the visual model of FIG. 170. Referring to FIG. 170, adjacent purlins are shaded in some instances (for example near the Peak Line, right-of-center). FIG. 170 is an example where

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shading every purlin occurs (at least in some instances), versus shading every other purlin. Therefore new claim 52 reasonably defines the invention because shading substantially every other purlin occurs when using the program.

Applicants states that no new matter is introduced into the Application by this "AMENDMENT UNDER 37 CFR § 1.111."

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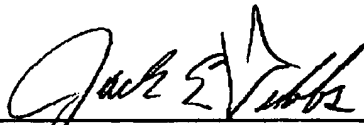
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Closing

In view of the above, Applicants believe that the rejections to their claims have been overcome, and that the claims are patentably distinct over all the references of record, whether alone or in combination. It is therefore respectfully requested that this patent application be given favorable reconsideration.

If the Examiner has any questions, Applicants' representative may be reached at (810) 687-8900. Thank you.

Respectfully submitted,

 05 Dec 06

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